UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE RESIDENTIAL CAPITAL, LLC,

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23 CV 3385 (JPO)

Conference
(via Telephone)

New York, N.Y.
May 12, 2023
3:10 p.m.

Before:

HON. J. PAUL OETKEN,

District Judge

APPEARANCES

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BY: CARMELA T. ROMEO
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THE COURT: Good afternoon. This is Judge Oetken. Mr. Hampton will call the case.

(Case called)

THE DEPUTY CLERK: Starting with the class attorneys, can counsel please state your name for the record.

MR. WALTERS: Fred Walters for the Mitchell class plaintiffs and for the Kessler class plaintiffs; together, the class plaintiffs.

MR. CHOPRA: Good afternoon, your Honor, Vivek Chopra from Perkins Coie for the ResCap Liquidating Trust, also plaintiff.

THE COURT: Good afternoon.

MR. LAHR: Good afternoon, your Honor. Gregory Lahr for the Lloyd's defendants.

THE COURT: Good afternoon.

MS. DUFFIELD: Cara Duffield for defendant Twin City Fire Insurance Company.

THE COURT: Good afternoon.

MR. KENNELL: Good afternoon, your Honor, this is Patrick Kennell of Kaufman Dolowich & Voluck for defendant Continental Casualty Company.

THE COURT: Good afternoon.

MR. O'CONNOR: Good afternoon, your Honor, John O'Connor, Steptoe & Johnson, for Clarendon National Insurance Company.

THE COURT: Good afternoon.

MR. ROSENTHAL: Good afternoon, your Honor, Thorn Rosenthal, Cahill Gordon, for Swiss Re.

THE COURT: Good afternoon.

MR. SCHILLER: Good afternoon, your Honor, Ronald Schiller for Steadfast Insurance Company.

THE COURT: Good afternoon.

MR. STOLTZ: Good afternoon, your Honor, Patrick Stoltz of Kaufman Borgeest & Ryan on behalf of defendant St. Paul Mercury Insurance Company.

THE COURT: Good afternoon.

MR. YALOWITZ: For North American, it's Kent Yalowitz and Carmela Romeo from Arnold & Porter.

THE COURT: Good afternoon.

Anyone else?

Thanks, everyone, for joining the call. I think this will be fairly brief. Just a reminder to please identify yourself each time you speak.

I have reviewed the motion to withdraw the reference in this case with the response and reply. I know this was before me sometime ago. I have only the vaguest recollection of it seven or eight years ago when there was a motion to withdraw the reference as a noncore matter. And I decided to keep it with the bankruptcy court to present ultimately a report and recommendation.

And I understand there have been proceedings for several years and that the work of the bankruptcy court is now done. And I believe there are dates for the filing of any objections to what is collectively regarded as an R&R, report and recommendation, by the bankruptcy court with objections due May 22 and then oppositions to the objections due July 3, which, as I understand it, are to be filed with me, and not with the bankruptcy court, for me to resolve.

Given that the bankruptcy court's work is done, I do believe that it's appropriate and not premature for the reference to be withdrawn and that the objection filing should be here.

I really just wanted to get the parties on the line for two reasons. One, give me any background about what this case is going to look like when it comes back to the district court and, second, any procedural issues I need to know about.

I've had a few cases where there were motions to withdraw the reference, and I kept it with the bankruptcy court for a report and recommendation, and I have actually never had them come back. They got resolved. So this is the first time it's happening. And I am not sure if there is any, particularly, procedural things I need to know about or do with the case coming back. Now it's just like any civil litigation.

I guess I would like to start with the first issue, just a little background on the case. I know at a very high

level that it relates to two plaintiff classes who I assume have been certified as classes relating to, I believe, sort of consumer fraud in the context of mortgages.

And what remains of the litigation, as I understand it, is coverage issues with all these different insurers and all it is is coverage. That is about all I know about it. If there is anything else you can tell me, I'll start with Mr. Walters, then Mr. Chopra, and then any of the defense counsel who want to weigh in.

Anything else you need to tell me about what the case is about and what's left. Am I right that the R&R does not resolve all the coverage issues on summary judgment but actually proposes that there are issues for trial, which usually doesn't happen in a case involving coverage? If we are doing a trial, I will do a trial. I want to know if it's a jury trial or bench trial.

Mr. Walters.

MR. WALTERS: Thank you, your Honor.

Just to give you a wee bit of background, these two classes that we are talking about, one was originally filed, the Mitchell class was originally filed in a Missouri court and was a Missouri-certified class action. It was tried and a $92 million verdict was rendered against the debtor, RFC, who ended up -- RFC was one of 52 entities who filed bankruptcy in the main RFC bankruptcy. That case was tried. It was reversed, in

part, as to punitive damages. In early 2012, before RFC filed bankruptcy, the remaining part of that claim was settled for 14 and a half million dollars in January and February of 2012.

RFC filed bankruptcy in May of 2012 and that settlement that had occurred before that had not yet been finalized in the Missouri state court. So the Mitchell class became a creditor and filed a claim in the bankruptcy. And during the course of the bankruptcy, from May of 2012 until the final plan was adopted in December -- or on December 11 of 2013, the Mitchell case was finally settled. It was remanded back to the state court for completion of the 14 and a half million dollar settlement. The settlement was approved by Judge Glenn at the bankruptcy court. So that's a 14 and a half million dollar settlement that was assigned the Mitchell class' rights against RFC. The policyholders were assigned to that class and that's the reason they are a party plaintiff in this case.

And the case was filed, as you will see from our motion to withdraw, the reference with all three plaintiffs, and I'll talk about the Kessler class in a minute, there were about 256 loans in that Mitchell case. So that 14 and a half million dollar settlement and the interest that's accused on it are the subject of the coverage action for the Mitchell class.

With respect --

THE COURT: Hold on. Let me stop you there. Has the

settlement been paid out?

MR. WALTERS: Has the settlement been paid out? No, it has not. The underlying -- Mr. Chopra will probably speak to the rest of that case, your Honor. But the 14 and a half million dollar settlement was never paid out either by RFC or by the insurance carriers who provided coverage for RFC.

But the underlying case, which was on appeal, there was about four and a half million dollars of actual damages. And by the time the Mitchell case was finally appealed, RFC actually ended up paying to the Mitchell class for compensatory damages in excess of $15 million, is my recollection. And I believe that $15 million that was actually paid out by RFC at that point in time is the subject of the coverage claim of the trust, which is the successor to RFC. The liquidating trust is a successor to RFC.

Does that answer your question, your Honor?

THE COURT: I am confused. It sounded like you said it was not paid out and then that it was paid out.

MR. WALTERS: There were two aspects of it. There was one aspect of it, the compensatory damages and attorneys' fees and interest accrued. All of those damages were paid out by RFC. The case was appealed and there was also a $92 million punitive damages verdict. The punitive damage verdict was reversed on appeal because of an instructional error. And before it could be retried, that 14 and a half million dollar

punitive damage claim was settled for -- was settled for 14 and a half million dollars. Actually, the claim was much, much larger than 14 and a half million dollars. It's only the punitive damage portion of the damages that have not been paid out, if that makes sense.

THE COURT: It was a simple question. Were the plaintiffs in the underlying Mitchell class paid their money in compensatory damages?

MR. WALTERS: No. For compensatory damages?

THE COURT: Yes.

MR. WALTERS: Yes, they have for compensatory damages, but not for the punitive damage settlement.

THE COURT: 14 and a half million is an all-in settlement.

MR. WALTERS: 14 and a half million resolved the remainder of the case other than the actual damages that they had been paid. That's correct, yes.

THE COURT: Go on.

MR. WALTERS: With respect to the Kessler case, your Honor, the Kessler case was a multidistrict litigation that was first filed in 2001. There were several cases filed that were consolidated into an MDL in the Western District of Pennsylvania.

That case started with RESPA claims, Real Estate Settlement Practices Act claims, for illegal loans,

originations, practices, predatory lending practices by the originating lenders who were two big banks at the time, Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee, Florida. That case was pending in the Western District of Pennsylvania from 2001 and it went up to the Third Circuit on appeals at various times during the time it was pending there twice, once for an alleged settlement in 2003. That settlement was revoked. The case went back to the Western District of Pennsylvania.

Then the class attorneys in that case had -- we were objectors to that settlement and were appellants in that first appeal -- came back after that appeal and -- again not us, but the class plaintiff again tried to settle it. And it was just RESPA claims in that case at that point in time.

And the assertion was that there were other valuable claims, HOEPA, which is the Home Equity Protection Act, and TILA claims that the original class counsel did not assert and that we said should have been asserted because they were very valuable.

Anyway, the case went up to the Third Circuit after a second attempt at class settlement and, again, there was only a RESPA claim. Again -- not the Second Circuit. The Third Circuit reversed a second time. It came back and at that point in time discovery actually began in earnest. Even though the case had been pending for seven, eight, ten years, there hadn't

been a lot of discovery undertaken.

So discovery started in 2010 after that second reversal by the Second Circuit. And then early in 2011, the original class plaintiff and the objectors, which we were objectors at that point in time, combined forces. We amended the MDL complaint and alleged the missing causes of action that hadn't been previously asserted, that is, the HOEPA TILA claims and we said those HOEPA TILA claims were in excess of a billion dollars. The RESPA claims and the HOEPA TILA claims, once together, the plaintiffs asserted were worth very close to $2 billion in damages.

Discovery began in earnest in that case, as I say, in late 2010. There were motions to dismiss filed in the MDL in the fall of 2011. And the original district court judge, Judge Lancaster, unexpectedly passed away, and he was replaced by Judge Schwab of the Western District of Pennsylvania.

There were motions to dismiss filed in the fall of 2011, and those were pending in fully briefed. We roll around on that particular case until May of 2012. RFC was, again, one of the defendants in that case, your Honor. And once RFC filed bankruptcy in 2012, in RFC, the case against RFC in that case was stayed, and the class plaintiffs all filed claims in the bankruptcy court.

The claims by the borrowers in that case were asserted under RESPA and the Home Ownership Protection Act and TILA and,

lastly, there were some RICO claims also asserted in that case.

When the claim was filed in the bankruptcy court, I think it was in November of 2012, the claim asserted by the Kessler class was $1.87 billion. While the case was pending in the bankruptcy court, and this bankruptcy judge at that time, the ResCap bankruptcy I believe was the largest bankruptcy filed in 2012 in the Southern District of New York.

Because of the massive amount of claims in that case, Judge Peck was appointed by Judge Glenn to act as a global mediator of that case in the fall or December, I believe, actually, of 2012. Judge Peck then engaged in mediation with all of the parties, and over time a global settlement was reached not only with the Kessler class settlement, but with all of the trusts. There were literally thousands of securitization trusts, your Honor, that had claims in the bankruptcy case against RFC for bad loans.

As a result of that global settlement, there was a settlement reached under the auspices of Judge Peck in the mediation. In the summer, I think, June 24 or 26, the date slips me, of 2013, the Kessler class was settled, class claim was settled for $300 million.

And that class, your Honor, was made up -- as I indicated before, the Mitchell class was only 245 loans, probably about three or 400 actual borrowers. The Kessler class from these two originating banks, CBNV and GMBT, was a

massive class. There were 44,535 loans in the Kessler class and there were in excess of 70,000 actually class members that were borrowers on those 44,535 loans.

Once it was settled -- and also consistent and sort of parallel to the settlement of this claim, there were all kind of negotiations with constituent parties, including the unsecured creditor's committee, about arriving at a final Chapter 11 plan, and it was a liquidating plan, your Honor, that it was supposed to be.

Anyway, let me just take you through the Kessler settlement. The case was settled in June of 2013. Given this was a class settlement where the class had to be -- and the settlement had to be approved by the Court, as you know, so there was a preliminary approval motion filed in early August of 2013. Judge Glenn approved that -- preliminarily approved it with his order with a preliminary approval order in August of 2013, late August, and set a final class settlement hearing for November of 2013.

At that November hearing, there was one borrower objector and then there was also an objection by PNC Bank. The objection by PNC Bank --

THE COURT: This is taking way too long, Mr. Walters.

MR. WALTERS: I'm sorry, your Honor.

That case was finally resolved and settled and it was again resolved on December 11 of 2013 in the approval --

THE COURT: Hold on, Mr. Walters. You can stop.

Mr. Chopra, can you do this more efficiently, please.

MR. CHOPRA: Sure, your Honor. Thank you.

This is an insurance-coverage action that stems from errors-and-omissions policies that were sold by a tower of insurers, those are the defendants, to GM, and a subsidiary of GM, RFC, is the insured. And RFC declared bankruptcy in 2012 and the bankruptcy plan was confirmed in the summer of 2013, and out of that came three plaintiffs who all had insurance claims.

There's Mr. Walters' clients, which is the Kessler class. They had a big settlement that he just talked about. There is a Mitchell class that had a 14 and a half million dollar punitive settlement that he talked about. And then there is the trust, the liquidating trust, which resolves claims filed on behalf of the creditors.

We got all the other insurance rights and that is like defense costs. There was some other settlement. There was a judgment in the Mitchell case. The RFC had paid --

THE COURT: When you say we, tell me what you mean by we.

MR. CHOPRA: I'm so sorry. RFC had paid those prior to its bankruptcy. The coverage had been denied by the insurers. So those were chosen actions. Those were claims that existed that were assigned to the liquidating trusts to

prosecute as part of the confirmed plan.

THE COURT: You represent that trust.

MR. CHOPRA: Correct. And the trust has about $68 million in claims related to amounts that RFC paid prior to its bankruptcy in the defense and settlement of a number of these consumer fraud cases.

The trust, the Kessler class, and the Mitchell class filed suit in February 2015. It was referred to the bankruptcy court. There was a motion to withdraw the reference. You're aware of that.

In the bankruptcy court there were several summary judgment issues that were addressed. Those are all combined in the report and recommendation. I will say that Judge Lane and Judge Jones do a nice job of summarizing the history of the case in that report.

We went through fact discovery, went through expert discovery. And at the end of expert discovery, the parties filed motions in the spring of 2022, and we had a hearing on May 12, 2022 on these 11 different summary judgment motions, that Judge Jones issued his opinion in December of 2022, and you have seen the summation order. He combined the prior summary judgment decision by Judge Lane and all of his summary judgment decisions into a report and recommendation. The objections are due May 22. The responses are due July 3.

Let me do one more thing. Most coverage cases have,

obviously, issues that are resolved on summary judgment, and Judge Jones has resolved a number of exclusions, whether the claims are covered under the insuring clause, but he found that there are issues of disputed fact regarding foreseeability of consequential damages regarding the alleged bad faith -- I am trying to be neutral here -- to the alleged bad faith, obviously, of the insurer defendants and also of whether the Kessler settlement was reasonable. Those the judge all found were issues of fact that should be the subject of a trial. The parties will be filing, I assume, the defendants and the plaintiffs, objections and responses to those rulings, but that's basically how they shake out.

THE COURT: Is it a bench trial or a jury trial?

MR. CHOPRA: No. It's a jury trial. A jury trial has been demanded and that was one of the reasons, in addition to the parties objecting to the case being tried in a bankruptcy court, that it must be tried in the district court.

THE COURT: It's not just a declaratory judgment action.

MR. CHOPRA: It is not just a declaratory judgment action. There is breach-of-contract claims and the plaintiffs have consequential damages demands as part of those breach-of-contract claims. The third amended adversary complaint is the operative complaint and that complaint includes a request for attorneys' fees and consequential

damages. Both of those requests have factual issues.

THE COURT: In the bankruptcy court have you had settlement discussions in the last couple of years?

MR. CHOPRA: Not in the bankruptcy court, but the parties engaged in a mediation in the fall of 2019. This was while summary judgment was pending on one set of exclusions and no discovery had occurred. The mediation failed. There have been no substantive settlement discussions since then, and we spent basically '20 and '21 and into '22 completing an enormous amount of fact discovery, about 60 depositions, ten experts, and all of the briefing that I just summarized that Judge Jones ruled on in December of 2022.

THE COURT: Explain to me, a nonbankruptcy expert, the different positions of Mr. Walters and his clients and you and your client, the liquidating trust, vis-a-vis positions in the litigation. Are you essentially aligned? Are there differences?

MR. CHOPRA: We are essentially aligned as plaintiffs. I think the way you should think about this is, there are about six components to the insurance-coverage claims. The trust owns four of them, defense costs for all these different actions and certain settlements and a judgment that RFC paid. The Kessler class owns, because it was assigned as part of the plan, a claim for a $300 million settlement that was reached during the bankruptcy. So it hasn't been paid, right. It's an

assigned claim and now the --

THE COURT: You stated it has not been paid or it has been paid?

MR. CHOPRA: It has not been paid because it was an allowed claim in the bankruptcy. So the settlements reached in the bankruptcy, the plaintiffs in RFC in the bankruptcy said, hey, it's worth $3 million, and the Kessler class has been assigned the right to pursue RFC's insurers for that amount.

THE COURT: What about the Mitchell class, is that still part of it?

MR. CHOPRA: Yeah. The Mitchell class is a little bit more complicated. I'll do it very simply. There was a compensatory damages judgment and attorneys' fee award that was affirmed on appeal, and RFC paid that before it went bankrupt. But there was a punitive-damages settlement that was never paid because it was consummated on the eve of the bankruptcy.

THE COURT: That's the 14 and a half million.

MR. CHOPRA: That's the 14 and a half million. That's one of Mr. Walters' clients. You are going to hear Mitchell spoken about.

My client, the trust, has its claim for paid amounts, the judgment that RFC paid in 2011, the defense costs it incurred for years. It paid an attorneys' fee award in 2012.

There is a Mitchell settlement class that's an allowed claim in the bankruptcy, and they were given -- assigned their

rights to pursue that 14 and a half million against this tower of insurers, where Lloyd's is the primary. Then there is several of what they call first-level excess. Then there is Swiss Re, the second-level excess. And then there are several insurers at the top.

The Lloyd's policy has all the terms and conditions that are largely relevant, and then the rest of these policies follow form. I don't want to speak for them. But that's generally how the litigation is.

So the three plaintiffs are aligned in coverage, but we each have different claims with different quantum.

THE COURT: Got it.

The jury trial will deal with the issues of insurers' alleged bad faith, consequential damages. What else?

MR. CHOPRA: This is a subject of motions that you are going to see in the objections, so I don't want to speak too far to it. The Kessler settlement -- the insurers challenge the reasonableness of the Kessler settlement. That's the $300 million settlement. That's one of Mr. Walters' clients. And there was briefing before Judge Jones as to whether they can challenge the reasonableness or whether it's per se reasonable under the law. Judge Jones ruled on that and that's part of the report and recommendation, so you are going to be engaging on these issues when you engage with the objections.

Just to summarize, at the end of Judge Jones' handling

of it, he had said that a jury should decide the reasonableness of the settlement, that it's a factual issue. That's not my claim, but that's certainly a subject for the jury, according to Judge Jones.

MS. ROMEO: This is Carmela Romeo from Arnold & Porter.

Since we are talking about this, I think, looking at the decision as it stands, and just like Mr. Chopra said, this is going to be the subject of objections on both sides, right, for the different 11 rulings.

But as it stands, the jury trial would touch on -- it would be, one, reasonableness of the settlement; two, breach of good faith and duty of cooperation by the insured; and, third, intentional misconduct.

MR. CHOPRA: That's fair. Those are the defendant insurers' defenses to the Kessler settlement, your Honor.

THE COURT: How long do you contemplate a jury trial will be if I scheduled it?

MR. CHOPRA: It's a great question. The parties have not met and conferred on it. The plaintiffs spoke about this yesterday in preparation for the hearing.

I think three weeks is probably where this goes. Both sides have experts. The insurer plaintiffs will have some fact witnesses. There will likely be claims representative testimony on the side of the defendants. So it seems to me,

having done these trials in other forms, I think three weeks is probably where we are at.

THE COURT: I could decide not to accept the R&R, to the extent that summary judgment was denied on certain issues, and determine that summary judgment is appropriate on everything one way or another.

MR. CHOPRA: There were two motions, your Honor, below that were -- there would be complete defenses to coverage, had Judge Jones ruled in favor of the defendants. Judge Jones ruled in favor of the insureds on those issues. One was an exclusion called CE38. The other was whether the claim satisfies the insuring agreement.

To answer your question, if you were to reverse Judge Jones on either of those two rulings, you would obviate the need for a trial. Of course, I'd be hugely disappointed.

THE COURT: Got it.

MR. SCHILLER: Your Honor, this Ronald Schiller for Steadfast.

The only thing I wanted to add is that there are some insurers at the very top of the tower, and we are one of them, Steadfast, the fourth excess layer. We will also have other arguments and defenses.

We do follow the language of an earlier underlying policy, but the conduct as to whether there is waiver, estoppel, breach of the policy's cooperation clause is

different as to those of us that don't even attach until $300 million.

I have a hard time answering what's a fair question, which is how long this will go, because I think, to some extent, it's going to really depend on what your Honor decides should be tried.

MS. ROMEO: Going back to your question, Judge, depending on what objections are brought, our position is that you have *de novo* review of that, right, so you can make your findings based on what should go to trial and what shouldn't.

One thing I wanted to note is, you had asked at the outset about procedural issues to keep in mind and things of that nature. One thing I wanted to put out there is, you know, this case is certainly going to be a lot of motion in lims from everybody, as the number of parties involved, and there will be a number of motion in lims on both sides, I'm sure, going to the three issues that would be tried as of right now.

One other thing is, there could also be a potential request to try to sever the trial between the primary and the excess issues.

Again, we have not met and conferred about these things. It's all very preliminary. I just wanted to throw that out in the sense of procedural things where that might be in the pipeline or things to consider.

THE COURT: On the procedural question, I frankly

didn't understand the opposition to the motion to withdraw the reference. Given that Judge Jones was done with the case, I don't know why it's premature to move to withdraw the reference. I know that objections are going to be filed, but those are filed with me, right?

MS. ROMEO: Yes, your Honor. I think, from our perspective, the most important thing is that the objections are to be reviewed *de novo*, and that's our position. It's something that both sides have been going back on, back and forth on. And I think, practically, if you withdraw the reference, which you indicated you are going to do, then we would just file our objection here, both sides. Then file the responses. And then your Honor will decide those and that will be how the case moves forward.

THE COURT: Ms. Romeo, if you know, is it like a magistrate judge R&R in that as to which there is objections, it's *de novo* review and those with respect to which there are no objections, it's basically abuse of discretion are clearly erroneous?

MS. ROMEO: It's akin to that, correct.

MR. CHOPRA: That's largely right, meaning there is now a report and recommendation with these rulings and there are going to be objections and responses.

There are some rulings within that report and recommendation that the trust is going to take the position

it's not *de novo* review, and I think that will be addressed in objections and response briefs, and then you will make that decision. That's the only tweak I want to say.

It's not a perfect analogy to the magistrate because the bankruptcy court has a broader jurisdiction over interlocutory orders and anything that is not final. We will address it in our papers. I don't want to reopen something --

MS. ROMEO: Going along with that, we take different positions on that, and your Honor will see that in the objections. But I do think that is also part of this motion and the objection which we mention in our response.

MR. CHOPRA: Your Honor, I think, procedurally, you'll decide these objections and responses. And assuming that they go the way the motions went in the bankruptcy court, there will be many coverage issues decided, but there will be several issues that will require a finder of fact to be tried.

What the trust would request is that we schedule a hearing at some point soon where we could have a scheduling conference where we talk about getting a trial date scheduled, understanding that you'll be getting objections and you'll be getting responses and you will take some time to rule on them.

Given the age of the case, our hope is that we can get a trial date as soon as is available so that once those objections are ruled upon, we could go straight into the pretrial process.

MR. WALTERS: Judge, we are in agreement with Mr. Chopra about the scheduling conference to get a trial date, given the length of this trial, potentially. I think as much lead time as we can get ahead of time with the trial setting, it would benefit all the parties.

THE COURT: OK. Let me just ask briefly about that.

Mr. Chopra threw out the idea of a three-week jury trial. We can probably act pretty quickly to get something on the calendar.

However, I guess I wonder how much variability is there in the likelihood of a longer or a shorter trial based on how I come out on the various objections? In other words, is there a world -- I know there is one that Mr. Chopra mentioned. But sort of based on other possible outcomes, is there a world where it's a one-week trial, two-week trial, four-week trial, such that I should wait before scheduling the trial until I rule on the objections?

MR. CHOPRA: That's a very fair question. There is a motion about the reasonableness of the Kessler settlement that's a heavily fought factual issue. If you rule that reasonableness is not a defense the insurers can raise, then the trial would shorten considerably. On the other hand, just to be evenhanded, if you rule on some of these exclusions, there is not much of a trial left because only defense costs would be available for the trust.

I guess what I would respectfully request is that knowing the volume of paper you are about to receive through the objections and responses process with someone who has lived through this case for seven years, having a conference with you some time in the next month or so to set a trial date that, admittedly, it may shorten, depending on how you rule, I respectfully still request to get on your calendar for 2024, honestly, so that we have an end date for this case.

MR. WALTERS: Your Honor, Mr. Chopra is right. With respect, there are two -- the reasonableness motion. There is one that's a procedural motion that has been heavily briefed that the insurers can't raise the reasonableness procedurally of the Kessler settlement. Then there is a second one about its reasonableness as a matter of law.

Judge Jones said both of those were fact issues for the reasons and there will be objections to each of those.

One of those, Mr. Chopra is right, that reasonableness has to be tried. Or if you should change Judge Jones' ruling in that regard, that could shorten it somewhat.

THE COURT: Ms. Romeo.

MS. ROMEO: Your Honor, if I may.

I do agree with one thing Mr. Chopra said. I think we should perhaps set a conference to discuss the setting of a date, which I don't think we should do today because I don't think we are in a position to do that, to see who files what on

May 22 and to have an idea of what's before you.

Like Mr. Chopra said, there could be a lot of variability here in terms of how this trial is going to shake out, how long it's going to be, what's in, what's out.

And then the other thing I was going to say is, once your Honor has had an opportunity to review the objections and the responses and then render rulings on that, another thing we think procedurally that we should have the deadlines for preparing all of the related pretrial materials, the JPTO, the motion in lim, which, again, we think will be plenty, and the jury instructions to flow from that date once the decisions are made on the objections.

We don't think we are in a position to set a trial date today, particularly because we have not yet conferred amongst ourselves, between the plaintiffs and defendants, to see what we might be able to tell you to reasonably set such a date. I don't think we should do that today.

MR. CHOPRA: We are stretching out a bit, so I appreciate your patience, your Honor.

I wonder if we could request a conference after July 3. At that point, all of the objections and responses will be in. You'll have a better sense of the volume of work you have ahead of you, and, at the same time, it would give us an opportunity soon, some time in July, hopefully, to be in front of you to talk about scheduling issues.

I'm not suggesting we get a trial date today. I am just saying, there is some urgency on the plaintiff's part, given the age of the case, that we get a trial date just so that we don't miss out on the opportunity.

THE COURT: That's fine.

MR. WALTERS: We agree with Mr. Chopra with respect to that scheduling conference being after the July filing. You will have a good sense at that point in time.

Obviously, according to your pretrial procedures, once you rule on all those objections and all the dispositive motions have been ruled, we drop right into your pretrial procedures on your chambers' direction. We think that's a good idea. The other set of plaintiffs do also. If your schedule permits us to talk again after July 3, soon thereafter, we think that would be helpful.

THE COURT: That's fine. Do you want to come in and do it in person? Would that be helpful or is that too complicated, given the number of people?

MR. WALTERS: We would prefer Zoom. We would probably prefer Zoom, if that's something you would entertain.

MS. ROMEO: We are OK with in person or remote. We are also fine with setting a conference to talk, once everything is in.

MR. CHOPRA: Your Honor, we can obviously do both, in person or remote. I would think the scheduling conference is

fine to do remote.

MR. SCHILLER: Remote is fine for us as well, your Honor.

THE COURT: How does July 11 look for you all for a scheduling conference? That's a Tuesday.

MS. ROMEO: Your Honor, that would be fine for me currently. I just would need to check with my colleague, Kent Yalowitz, who unfortunately had to drop off the call at 3:30. If I could just put that caveat in there. From our perspective, that would be OK.

MR. WALTERS: I think July 11 would be fine, your Honor, for us.

MR. CHOPRA: Your Honor, that date works for the trust.

MR. LAHR: Gregory Lahr for the Lloyd's defendants. That date would work for us.

MS. DUFFIELD: Fine for Twin City as well.

THE COURT: Anybody it does not work for?

Why don't we put it down for July 11, a conference -- can we make it 3 p.m. New York time?

MR. CHOPRA: Thank you, your Honor.

MS. ROMEO: Yes, your Honor.

MR. WALTERS: Yes, your Honor.

THE COURT: We will set it for 3:00 p.m. July 11. I will send out information. It will either be by Microsoft

Teams or by phone. I'll let you know in advance of the conference.

Thank you, all. That was helpful background. I look forward to your objections. We will talk on July 11 at 3:00 p.m. If that ends up not work for anyone, you can all just propose another date in that week or the following week. I have a fair amount of openings those weeks.

Anything else anybody else wanted to raise today?

MR. ROSENTHAL: Yes, your Honor. Thorn Rosenthal from Cahill.

Certain of the defendants filed objections already in the bankruptcy court with respect to one of the motions. Would your Honor like us to refile them in the district court?

THE COURT: Yes, if you would. That would be great.

MR. ROSENTHAL: Thank you.

THE COURT: Anyone else?

Thanks, everyone. This matter is adjourned. Have a good day.

(Adjourned)